

REMARKS

In this office action the Examiner rejected claims 1-2, 4, 9-11, 14, 16 and 27 under 35 U.S.C. 102(b) as being anticipated by Younick. To support the rejection the Examiner stated,

"Younick shows an apparatus for applying upward pressure to an object. The apparatus includes a first means 6, an elongated rod 1, a second means 4, and a third means 7. Since the Younick device is a 'wrecking bar', the examiner takes Official Notice that wrecking bars are commonly made from steel and that steel would have the strength characteristics recited in the claims."

Applicant must disagree with the Examiner's interpretation of Younick with respect to the present application. The present application provides in claim 1 that ".....said substantially stationary third means being positioned for supporting and pivoting said apparatus." And further in claim 2, "...said substantially third means is positioned substantially perpendicular to said second means on an underside of said second means."

The third means 7 of Younick is not a pivoting means. The "...outwardly extending arms 7, which arms are preferably formed integral with the bar and engage the support 3 at opposite sides of the bar, thereby preventing twisting of the bar from one side or the other during a prying operation and engaging the support 3

over a larger area and consequently relieving the strain from a single point on the support, thereby preventing breaking of the support." (Page 1, lines 50-59). And "axially aligned outwardly extending lugs in the plane of the curved portion of the handle member" (Page 1, lines 71-73).

The third means of Younick is not a pivoting means nor can it act as such since such third means 7 is on the same plane as the curved portion of the bar 2 and is not disposed below the bar as is the third means 40 of the present invention so as to act as a fulcrum and provide a pivot point. The bar 7 of Younick only provides lateral support to prevent the wrecking bar from twisting when the handle of the bar is lowered to raise the flattened end 4 during a prying operation.

It is well settled patent law for a reference to anticipate an invention, such reference must show each and every limitation of the claim. Clearly this is not the case here.

Claim 2 is clearly not anticipated by Younick, since as stated previously claim 2 clearly states that such third means is "positioned substantially perpendicular to said second means on an underside of said second means." The bar 7 of Younick is not on the underside of bar 2.

Since claims 4, 9-11, 14 and 16 are all dependent on claim 1 such claims are therefore also not anticipated by Younick.

With respect to claim 27, Applicant notes that there is no teaching in Younick to suggest that the flattened end 4 of the wrecking bar is designed to prevent sidewise tipping of such apparatus. As stated previously Younick teaches "To obviate this difficulty the bar is provided adjacent its curved portion 2 with outwardly extending arms 7, which arms are preferably formed integral with the bar and engage the support 3 at opposite sides of the bar, thereby preventing twisting of the bar from one side to the other during a prying operation and engaging the support 3 over a larger area and consequently relieving the strain from a single on the support...".

Thus, Younick teaches the need for the outwardly extending arms to prevent sidewise tipping whereas claim 27 of the present invention provides a "...surface bearing area which is at least sufficient to prevent sidewise tipping of said apparatus during use."

With respect to the discussion supra, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-2, 4, 9-11, 14, 16 and 27 under 35 U.S.C. 102(b) as being anticipated by Younick.

Further in the Office Action the Examiner rejected claims 3,5,12 and 15 under 35 U.S.C. 103(a) as being unpatentable over Younick in view of Morgenberger and Christensen et al. The Examiner stated, "Morgenberger teaches that various objects and

user hand engaging portions of the lifting lever may include grips or caps to cover the extremities of these engaging portions. To provide grips or caps on any of the engaging portions of Younick would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Morgenberger.

Christensen et al teaches that the object engaging portions of a lever may be made from rubber or plastics. The examiner takes Official Notice that a common plastic is polyethylene. To make the engaging portion in Younick from polyethylene would have been obvious at the time of the invention in view of the teachings of Christensen et al."


Applicant again must point out that the present invention is different from that taught by Younick. The present invention provides that such third means is a pivoting means. Such is not possible with the device as taught by Younick. Since claims 3,5, 12 and 15 are all dependent on claim 1 the teachings of Morgenberger and Christensen do not alter the fact that the present invention is not taught or even suggested by Younick. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 3,5,12 and 15 under 35 U.S.C. 103(a) as being unpatentable over Younick in view of Morgenberger and Christensen et al.

The Examiner also stated, "Claims 6-8, 17-26, and 28-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 11/21/05."

In view of the discussion supra, it is believed that the invention as described in claims 1-5, 9-12, 14-16 and 27 is patentable and that this application is now in condition for allowance and such allowance by the Examiner is respectfully requested.

In the event the Examiner has further difficulties with the examination and/or allowance of the application, the Examiner is invited to contact the undersigned agent for applicant by telephone at (412) 380-0725, if necessary, to resolve any remaining questions or issues by interview and/or Examiner's Amendment as to any matter.

Respectfully submitted,
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